



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

August 4, 1978

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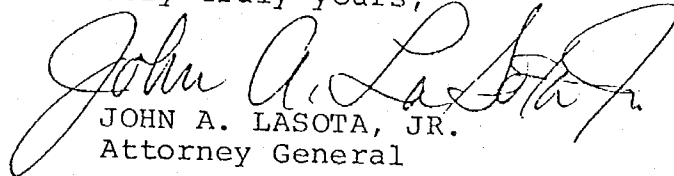
Mr. Q. Dale Hatch
Deputy County Attorney
400 Superior Court Building
101 West Jefferson
Phoenix, Arizona 85008

Re: 78-201 (R77-342)

Dear Mr. Hatch:

In connection with our review of your School
Opinion No. 77-18, we enclose herewith a copy of Atty.
Gen. Op. No. 78-188 (R77-169) which will serve to revise
your opinion.

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General

JAL:eb

Enclosure



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

August 2, 1978

Honorable Stephen G. Udall
Apache County Attorney
Post Office Box 637
St. Johns, Arizona 85936

Re: 78-188 (R77-169)

Dear Mr. Udall:

We have reviewed your May 5, 1977 opinion addressed to the Window Rock School District and Chinle School District No. 24, which concludes that school districts may contract to pay bonuses to administrative personnel and that compensatory time off for overtime work, if to be provided, must be provided for by contract. The following is a revision of that opinion.

You were asked whether a school district may pay bonuses to administrative personnel. We concur with your conclusion that a school district may pay bonuses to its employees, but we think that a school district may do so only if the bonuses are part of the compensation package provided for in the contracts entered into between the parties. We agree that payment of bonuses without a prior contractual agreement is illegal, but we also think such bonuses are legal only if paid for services rendered during a period covered by a contract to pay a bonus for services rendered. See Atty. Gen. Op. No. 71-16.

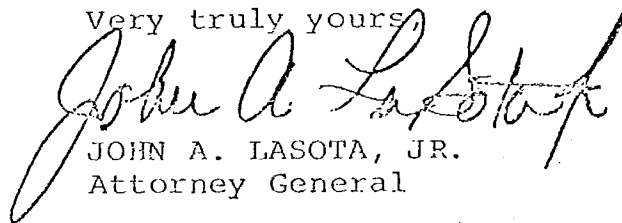
The school districts also asked whether administrators and other employees are eligible for compensatory time off for overtime work. Art. 18, § 1 of the Arizona Constitution sets eight hours as the maximum work day for all political subdivisions of the State. Washington School Dist. No. 6 v. Superior Court, 112 Ariz. 335, 338, 541 P.2d 1137, 1140 (1975). Therefore, this constitutional provision applies to school districts. However, Art. 18, § 1 is not self-executing. City of Phoenix v. Yates, 69 Ariz. 68, 208 P.2d 1147, 1152 (1949). Since the issuance of your opinion the

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Legislature has implemented Article 18, section 1, by enacting Ariz. Sess. Laws 1978, ch. 104, to authorize school districts, among others, to determine eligibility for overtime pay and whether overtime will be paid in cash or compensatory time off.¹

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General

JAL:eb

¹A.R.S. § 23-391 provides:

A. Subject to availability of appropriated funds, an employee of the state or any political subdivision, serving in a position determined by the state personnel board, the board of regents, the state community college board of directors, the board of directors for the school for the deaf and blind or the governing body of a political subdivision, in the direction of such board or body, to be eligible for overtime compensation who is required to work in excess of such person's normal work week, may be compensated for such excess time at the rate of either:

1. Not to exceed one and one-half times the regular rate at which such person is employed.
2. One hour of compensatory time off for each hour worked in lieu of cash payment.

B. Notwithstanding the provisions of subsection A, the state or a political subdivision may provide, by action of the board of regents, the state community college board of directors, the board of directors for the school for the deaf and blind or the state personnel board in the case of the state or of the governing body of the political subdivision, for a work week of forty hours in less than five days for certain classes of employees employed by the state or the political subdivision.

OFFICE OF THE MARICOPA COUNTY ATTORNEY

CHARLES F. HYDER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



October 11, 1977

Mrs. Alveda Bandouveris
President
Cave Creek School District
Board of Trustees
P.O. Drawer 426
Cave Creek, AZ 85331

School Opinion No. 77-18

Dear Mrs. Bandouveris:

This opinion is in answer to your letter of September 16, 1977, wherein you ask if it was legal for school employees to be paid overtime.

Article XIII, Section One of the Arizona Constitution states that eight hours, and no more, constitutes a lawful days work. This provision is not self executing according to the court in City of Phoenix v. Yates, 208 P.2d 1147, which means that the legislature must enact legislation allowing overtime to be paid.

In State v. Boykin, 508 P.2d 1151 (1973) the court denied overtime to Department of Public Safety officers "because there is no statute authorizing pecuniary overtime compensation. . .this remains a matter for the legislature and not the courts".

The legislature has enacted A.R.S. §23-391 which provides overtime payments to "any person doing manual or mechanical labor" in emergency situations. The legislature has also enacted legislation allowing counties to pay their employees overtime and the Department of Public Safety to pay overtime to their officers but has not authorized overtime for other public employees.

Therefore, it is this office's opinion that, until the legislature acts, it is illegal for school boards to pay school employees overtime except in the situation where a person does mechanical or manual labor in an emergency.

A copy of this opinion is being sent to the Attorney General
for his concurrence or revision.

Very truly yours,

CHARLES F. HYDER
MARICOPA COUNTY ATTORNEY

By *Q. Dale Hatch*
Q. DALE HATCH
DEPUTY COUNTY ATTORNEY

10/17

Cave Creek Elementary School District No. 93

P. O. DRAWER 426 • CAVE CREEK, ARIZONA 85331

BLACK MOUNTAIN SCHOOL
TELEPHONE (602) 488-9200

DISTRICT OFFICE
TELEPHONE (602) 488-9816

CAVE CREEK SCHOOL
TELEPHONE (602) 488-3382

September 16, 1977

Charles F. Hyder
County Attorney
400 Superior Court Building
101 W. Jefferson
Phoenix, AZ 85003

Dear Mr. Hyder:

Mr. Hatch, Deputy County Attorney, orally advised four out of five Board Members in his office on August 15, 1977, that overtime for anyone other than 1. as laborers; 2. mechanics; 3. D.P.S. Officers; 4. County officers and workers; was, illegal.

We stopped overtime payment as of August 15, 1977. Last night, September 15, 1977, we tried to resolve this situation by reinstating "per Board motion" overtime for secretaries at time and one-half. According to our Administrator, we have been unable to get a written opinion on this.

We must have a written opinion on this problem as soon as possible.

Sincerely yours,

Alveda Bandouveris
Sm.

Alveda Bandouveris, President
Cave Creek School District #93

AFB/slm

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SEP 21 1977
MARICOPA
COUNTY ATTORNEY